

ORIGINAL

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STATE OF NEW YORK:

COUNTY COURT:

COUNTY OF ONONDAGA:

CRIMINAL TERM:

Part No. I:

THE PEOPLE OF THE STATE OF NEW YORK,

Indictment#:2016-0961-1,
 superceding #: 2016-0061-1
 Index #: 16-0049

vs.

HEARING**TONY W. JENNINGS,**

Defendant.

CPCS 3

Criminal Courts Building
 505 South State Street
 Syracuse, New York 13202
Tuesday, May 17, 2016

BEFORE:

HONORABLE WALTER W. HAFNER, JR.,
 County Court Judge,
 Fifth Judicial District

FILED

JUL 28 2017

APPEARANCES:

William J. Fitzpatrick, Esq. ONONDAGA CO CLERKS OFFICE
 District Attorney, Onondaga County

BY:

JEFFREY J. SCHIANO, ESQ.
 Assistant District Attorney
 Criminal Courts Building, Fourth Floor
 Syracuse, New York 13202

BY:

JOHN A. LoFARO, ESQ.
 Attorney for the Defendant
 307 South Clinton Street, #200
 Syracuse, New York 13202

The Defendant, present in person

Reported By:
 Patrick J. Reagan, RDR
 Official Court Reporter

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1 (Hearing commenced at 11:10 a.m.)

2 THE CLERK: This is the matter of Tony Jennings.

3 THE COURT: Where is Mr. Jennings?

4 (Defendant now present with Mr. LoFaro.)

5 THE COURT: Okay. We are here for a Mapp,
6 Dunaway and Huntley hearing today, I guess. So do you want
7 to call your first witness?

8 MR. SCHIANO: Yes, Judge. The People call
9 Officer Darrin Ettinger.

10 Judge, just before we begin, just so the record
11 is clear, I would like the Court to know as well as the
12 defendant prior to the hearing, last court appearance, I
13 made an offer to this defendant which was rejected. We
14 hadn't yet had the lab reports to indicate the weight of
15 the cocaine located on the defendant. I told Court, as
16 well as defense counsel, I would get them as soon as
17 possible. I did get them. The results of that laboratory
18 report indicate that the cocaine located on the defendant
19 was 2.576 plus or minus 0.002 grams of material, which
20 contained 1,262 plus or minus 154 milligrams of cocaine,
21 making this charge a D-felony by weight.

22 And so based on that, Judge, the Court should
23 know after this hearing, I do intend on superseding the
24 indictment because I think by operation of law at this
25 point, Count Two of the indictment has to be dismissed, as

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1 the weight is not sufficient to establish criminal
2 possession of controlled substance in the fourth degree.

3 It is, however, sufficient to establish criminal
4 possession of controlled substance in the fifth degree.
5 But because that statute or that charge is based on the
6 purity of the cocaine, I would have to supercede the
7 indictment, which I do intend on doing.

8 I offered, again, to this defendant one last time
9 a plea to criminal possession of a controlled substance, a
10 reduced charge -- I don't even know if we could do it in
11 the fifth degree -- with a sentence of three and-a-half
12 years plus two years post-release supervision, consecutive
13 to his parole time. He's rejected that offer, according to
14 his attorney. I just wanted the record to be clear about
15 that.

16 THE COURT: You say fifth degree? Because I have
17 fourth. Fifth degree, is it?

18 MR. SCHIANO: Correct. Because the weight
19 indicated in the lab report does not support the charge of
20 possession in the fourth degree.

21 THE COURT: Okay.

22 MR. SCHIANO: The aggregate weight initially at
23 the time of the stop, together with the packaging material,
24 did establish that weight. It does, however, establish a
25 weight to sustain a charge of criminal possession of

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1 controlled substance in the fifth degree, for which the
2 defendant faces a maximum sentence of incarceration of four
3 and-a-half years in state prison, and he still faces 15
4 years on the top count. I just wanted the record to be
5 clear before we start the hearing.

6 THE COURT: So he has a prior violent and a prior
7 non-violent, correct?

8 MR. SCHIANO: Yes, he does.

9 THE COURT: And the fifth is?

10 MR. SCHIANO: It's a D.

11 THE COURT: A D.

12 MR. SCHIANO: As I said, he is facing a maximum
13 of four and-a-half years on that charge; 15 years on the B.

14 THE COURT: And you offered him what, three
15 and-a-half?

16 MR. SCHIANO: I did.

17 THE COURT: Okay. So the minimum is two
18 and-a-half and the maximum is four and-a-half; and the
19 offer is three and-a-half.

20 And you have had enough time to discuss with your
21 client this situation here and how it looks like it can't
22 possibly get better?

23 THE DEFENDANT: I am sorry, Your Honor?

24 THE COURT: No, I just wanted to know if you have
25 had the opportunity to discuss with your attorney here what

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1 it looks like?

2 THE DEFENDANT: Yes.

3 THE COURT: This disposition can't get any
4 better.

5 THE DEFENDANT: Yes, yes, Your Honor.

6 THE COURT: You want some time to talk to him or
7 not?

8 THE DEFENDANT: In regards to me? I am under the
9 understanding that I am indicted on third degree and fourth
10 degree. So there will be a new indictment for fifth
11 degree, am I correct?

12 MR. SCHIANO: It would consist of a charge of
13 possession third and possession fifth.

14 THE COURT: It would be third and fifth. They
15 are offering you the fifth today.

16 THE DEFENDANT: Third and fifth. So fourth
17 degree is?

18 THE COURT: -- is gone.

19 THE DEFENDANT: Okay. Fourth degree is gone.
20 And fifth degree is in now?

21 THE COURT: They will give you an offer, if you
22 want to plead to the fourth degree.

23 THE DEFENDANT: I understand that. No, no, I
24 don't want to.

25 THE COURT: All right. So, do you want the take

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1 the chance of getting indicted for third and fifth?

2 THE DEFENDANT: So that's what is going to
3 transpire that? I am just trying to understand. There
4 will be another Grand Jury proceeding to where he presents?

5 THE COURT: A-hum.

6 THE DEFENDANT: Okay. I understand.

7 THE COURT: They may indict you for third and
8 fifth. Apparently, that's with the weight they have now.

9 THE DEFENDANT: Okay. Will I be allowed to
10 attend my Grand Jury? Because my first one I wasn't
11 allowed.

12 THE COURT: Sure.

13 THE DEFENDANT: I would like to attend my Grand
14 Jury for this one. Yes, Your Honor, I would like to be
15 present at this Grand Jury.

16 THE COURT: But you realize if the People are --
17 if they get an indictment with a new Grand Jury of criminal
18 possession controlled substance third, which is what they
19 wanted you to plead to, initially, in this indictment, the
20 minimum is six years and the maximum is 15 years? So,
21 you're looking at a minimum of six years. I am assuming
22 Mr. Schiano says he's not going to give you this fifth
23 degree, you're saying --

24 MR. SCHIANO: Absolutely not.

25 THE COURT: -- after today?

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7

1 THE DEFENDANT: Correct. Correct, I understand.

2 THE COURT: So the minimum is six years which is
3 more than the three and-a-half, he just offered you.

4 THE DEFENDANT: Right, that's for a B-felony,
5 correct?

6 THE COURT: Yes.

7 THE DEFENDANT: I understand, I understand. That
8 was the first initial offer, was the six years for the
9 B-felony, that I am charged with. So I understand, Your
10 Honor.

11 THE COURT: All right. He's not going to offer
12 you the minimum. It could be 15 years.

13 THE DEFENDANT: Right. Right. I understand.

14 THE COURT: Okay. As long as you understand.

15 THE DEFENDANT: Okay.

16 THE COURT: You still want to go ahead with the
17 hearing?

18 THE DEFENDANT: Yes, yes, Your Honor.

19 THE COURT: Okay.

20 MR. LOFARO: And Your Honor, again, just not to
21 be redundant, just so the record reflects, I have explained
22 to him his maximum exposure may be 15 years. I have told
23 him the three and-a-half years is on the table, to plead to
24 a D. And we exhaustively discussed that, albeit the fact
25 that it appears on its face to be a favorable disposition,

Ettinger - direct

1 he has rejected that.

2 Also, with regard to our hearing today, I have
3 explained to him that there are certain pitfalls that
4 accompany testifying at a suppression hearing. And I have
5 explained to him his right with regards to testifying and
6 not testifying. And he's adamant that he's going to
7 testify today as well.

8 THE COURT: All right.

9 D A R R I N E T T I N G E R, Called as a witness in behalf
10 of the People, being duly sworn, testified as follows:

11 THE COURT: Okay. You may proceed, Mr. Schiano.

12 MR. SCHIANO: Thank you, Judge.

13 DIRECT EXAMINATION BY MR. SCHIANO:

14 Q. Officer, good morning.

15 A. Good morning.

16 Q. Are you employed, sir?

17 A. Yes, sir.

18 Q. Can you tell the Court where you work?

19 A. Syracuse Police Department.

20 Q. How long have you been a member of the Syracuse Police
21 Department?

22 A. Since May 2006.

23 Q. Currently, what is your rank and assignment within the
24 police department?

25 A. I work for the crime reduction team.

Ettinger - direct - Schiano

1 Q. All right. And I know the Court's aware, but for the
2 record purposes, what is the crime reduction team?

3 A. It has been known, it's the guns, drugs and gangs unit.
4 We do the high priority in-progress crimes. We are not bound
5 by the radio, as patrol. We are looking for the violent. And
6 we are looking for the, like I said, the guns, drugs and gangs.

7 Q. Is that a proactive unit?

8 A. Yes.

9 Q. And your primary goal is guns, drugs and gangs in the
10 City of Syracuse, correct?

11 A. Yes, sir.

12 Q. And as part of your duties and responsibilities in the
13 crime reduction team, you spend a lot of time, your time and
14 most of your time in the high crime areas of the city,
15 correct?

16 A. Yes, sir.

17 Q. All right. I would like to direct your attention to
18 January 5th of 2016, were you working on that date?

19 A. I was.

20 Q. Tell the Court where you were working?

21 A. I was working Unit 526 with Officer Decker.

22 Q. Did you become involved in a drug investigation on
23 that date?

24 A. Yes.

25 Q. And was that investigation involving one Tony

Ettinger - direct - Schiano

1 Jennings?

2 A. Yes.

3 Q. Tell the Court how you became involved in that
4 investigation?

5 A. Well, we were on patrol in the Pioneer Homes. The
6 Pioneer Homes and Brick Town are two gangs that have been
7 feuding violently with each other. We were patrolling inside
8 the Pioneer Homes when, in the 100 block of Radisson Court, we
9 illuminated the vehicles in the parking lot. And one of the
10 vehicles was occupied. And as we illuminated the vehicle with
11 our spotlight, the occupants inside the vehicle began making
12 extreme furtive movements, looking down as if they were
13 attempting to hide or secrete items. We pulled up and exited
14 the patrol vehicle and approached the vehicle.

15 Q. Okay. So when you observed this vehicle, you
16 indicated it was at the Pioneer Homes?

17 A. Yes.

18 Q. That a parking lot?

19 A. It is, yes. It's the parking lot in between the
20 buildings that include the Pioneer Homes project housing.

21 Q. Okay. And did you notice right away that there were
22 individuals in that vehicle?

23 A. When we illuminated the vehicle, absolutely.

24 Q. Okay. And tell us specifically, when you say you
25 illuminated the vehicle, what does that mean?

Ettinger - direct - Schiano

1 A. We have a spotlight on our vehicle that we can move
2 around. And we illuminated that vehicle. And the occupants
3 inside the vehicle began making furtive movements, moving
4 around, like I said, dramatically.

5 Q. All right. Describe for the Court, what do you mean
6 by furtive movements? What specifically did you see the
7 occupants do?

8 A. We illuminated them. They looked at us and then
9 immediately turned away and began looking down, making movement
10 towards their laps, towards the center of the vehicle.

11 Q. All right. And tell us what you did next?

12 A. We pulled up and exited the patrol vehicle and
13 approached that vehicle.

14 Q. Okay. And were you alone or were you with someone?

15 A. I was with my partner Officer Decker.

16 Q. When you approached the vehicle, did you approach the
17 driver's side or the passenger side of the vehicle?

18 A. I approached the passenger's side.

19 Q. Tell us what happens as you approached the vehicle?

20 A. As I approached the vehicle, the front seat passenger,
21 who we identified as Willie Jones, was making movements. He
22 attempted to get out of the vehicle. I stopped and spoke with
23 him. Officer Decker approached the driver's side and he
24 notified me that there was a scale in plain view in the
25 vehicle.

Ettinger - direct - Schiano

1 Q. Okay. And specifically, where was that scale located?

2 A. In the console area. The open, not the open center
3 console but like I said, the front cup holder, of the center
4 console area.

5 Q. Tell us what type of scale it was.

6 A. It was a digital scale.

7 Q. Have you seen that type of scale in the past?

8 A. Yes.

9 Q. Approximately how many times have you seen that type
10 of digital scale?

11 A. Hundreds.

12 Q. All right. And when you say you've seen it hundreds
13 of times, you have seen it while you were working as a police
14 officer?

15 A. Yes.

16 Q. And commonly, what is that type of digital scale used
17 for?

18 A. Used for weighing and measuring out illegal drugs.

19 Q. Okay. And have you collected scales like that in the
20 past?

21 A. Yes.

22 Q. -- as evidence?

23 A. Yes.

24 Q. Approximately how many times?

25 A. Hundreds.

Ettinger - direct - Schiano

1 Q. All right. Now once you and Officer Decker make the
2 observation of a scale, which is, just so we are clear, it's
3 sitting on top of the center console?

4 A. Like I said, the open area of the center console. Not
5 actually. The center console was open but the front open area
6 like where the cup holder is, I guess you would say. Kind of
7 like the front of it. It's the open area of the console.

8 Q. Tell us what happens after you make that observation?

9 A. I asked Mr. Jones to step out of the vehicle. At which
10 time he was secured in handcuffs. And he was searched for
11 contraband.

12 Q. Okay. Did he make any statements to you at that time?

13 A. Actually, yes. When we went up to the vehicle, Officer
14 Decker had stated something, I can't remember what exactly,
15 what he said. But Mr. Jones said that he had just gotten done
16 doing coke. I think, Officer Decker asked: Is there any drugs
17 in the car? And Mr. Jones said, I just got done doing coke. I
18 don't have any.

19 Q. Okay. And at that time, was he taken out of the car?

20 A. Then he's taken out of the car.

21 Q. All right. And you secure him in handcuffs?

22 A. Yes. He is a very large male.

23 Q. Okay. Tell us what happens next?

24 A. I secured him in handcuffs. I searched him for
25 contraband. Officer Decker then asked Mr. Jennings to step out

Ettinger - direct - Schiano

1 of the vehicle. And at which time he begins to search Mr.
2 Jennings.

3 Q. Okay. And tell us what happened at that point?

4 A. During the search of Mr. Jennings, as Officer Decker
5 was beginning to search like his front pant's pocket areas, Mr.
6 Jennings violently pulled away and fled on foot, it would be
7 eastbound, from Officer Decker.

8 Q. Okay. And at that point, when he flees, nothing had
9 been located on Mr. Jennings at that point, correct?

10 A. No.

11 Q. All right. By the way, do you see Mr. Jennings in the
12 courtroom today?

13 A. I do.

14 Q. Can you just point to him for the record purposes,
15 identify what he's wearing?

16 A. Sitting at the table with the olive colored shirt.

17 MR. SCHIANO: Judge, for the record, I ask that
18 the record identify the defendant at this time?

19 Q. So at that point, Mr. Jennings runs, correct?

20 A. Yes.

21 Q. Tell us what happened next? Tell us what happens
22 next?

23 A. Officer Decker pursues him. Tackles him to the ground.
24 Mr. Jennings is struggling with Officer Decker. His hands are
25 beneath him. At that time, I run up and I strike Mr. Jennings

Ettinger - direct - Schiano

1 in the side of the face with a closed fist. We eventually were
2 able to pull Mr. Jennings' hands out from underneath him and
3 secure him in handcuffs.

4 Q. Okay. And at the time he flees, tell us where he is,
5 is he at the vehicle at that point?

6 A. Right when he is being searched, he is at the driver's
7 side door of the vehicle. Officer Decker is searching him. He
8 then flees to the left, eastbound towards the apartment
9 building, by only, like I said, about ten feet or approximately
10 ten feet.

11 Q. Okay. And you get him secured at that point?

12 A. We get him secured. I run back to -- we were only ten
13 feet away, I run back to Willie Jones, who is just standing
14 there, he didn't run, or do anything.

15 Q. Okay.

16 A. I actually thanked him for not running.

17 Q. Tell us what happens next?

18 A. Officer Decker is now searching Mr. Jennings. In Mr.
19 Jennings' front left pants pocket, Officer Decker locates one
20 section of clear knotted plastic containing a beige chunky
21 substance.

22 Q. Okay. And did you have a chance to observe that bag?

23 A. Yes.

24 Q. All right. Describe it for us?

25 A. It's a section of clear knotted plastic.

Ettinger - direct - Schiano

1 Q. And have you seen a section of clear knotted plastic
2 like that before?

3 A. Yes.

4 Q. Approximately how many times?

5 A. Hundreds.

6 Q. All right. And did you see what was inside it?

7 A. Yes, it was a beige, chunky substance.

8 Q. Have you seen that substance before?

9 A. Yes, sir.

10 Q. Approximately how many times?

11 A. Hundreds.

12 Q. All right. Tell the Court what did it appear to be to
13 you?

14 A. Crack cocaine.

15 Q. And at some point, was a field test conducted on that
16 beige, chunky substance?

17 A. Yes.

18 Q. All right. And are you and Officer Decker trained to
19 use those field tests?

20 A. We are.

21 Q. What was the result of the field test?

22 A. Positive for cocaine.

23 Q. Tell us what happens next?

24 A. Inside the same pocket, where it's tested later, it's
25 measured -- it's what's weighed, it's four grams of crack

Ettinger - direct - Schiano

1 cocaine. Officer Decker's continuing to search. After he
2 finds the crack, he locates \$110 in U.S. currency, cash money
3 inside the same pocket, the front left pant's pocket of Mr.
4 Jennings.

5 Q. Okay.

6 A. He locates that. We search the vehicle. Inside the
7 vehicle, I locate \$150 in U.S. currency, cash money, in the
8 same area where the scale was.

9 Q. Okay. And did you have a chance to observe the scale
10 again?

11 A. Yes.

12 Q. Was there any residue that you recognized on the
13 scale?

14 A. Yes.

15 Q. If you recall?

16 A. I should clarify, Officer Decker had already taken the
17 scale from the vehicle. That was at the initial stop when he
18 observed the scale. And he let me know about the scale. He
19 reached in and took the scale from the vehicle so that they
20 couldn't destroy evidence, so that it couldn't be tampered
21 with.

22 Q. Okay. And there was residue on that scale?

23 A. There was residue on the face of the scale.

24 Q. What was that residue consistent with?

25 A. Consistent with cocaine.

Ettinger - direct - Schiano

1 Q. Tell us what happens next?

2 A. Mr. Jennings is found to be on, he is on parole. He
3 said he ran because he was on parole.

4 Q. Let me ask you to stop for a minute. You said he made
5 a statement that he ran because he was on parole. When did he
6 make that statement?

7 A. After he was caught.

8 Q. Was that statement the product of any question?

9 A. No.

10 Q. He volunteered that statement to you?

11 A. Yes.

12 Q. All right. Did the defendant make any statements,
13 further statements about any injuries that he may or may not
14 have?

15 A. He said he was uninjured.

16 Q. Okay. Tell us what happens next?

17 A. We secured the money. Mr. Willie Jones was released
18 from the scene after warrant checks were found to be negative.
19 Mr. Jennings was subsequently arrested for third,
20 fourth, seventh, resisting. We towed the vehicle and placed a
21 hold on it for possible forfeiture. And our S.I.D., our
22 narcotics detectives were notified of the seizure of the
23 vehicle.

24 Q. Okay. And at some point did you bring the defendant
25 to the Justice Center?

Ettinger - direct - Schiano

1 A. Yes.

2 Q. To be booked? Tell us what happens if anything when
3 you get there?

4 A. At booking, we were asking about employment. He states
5 that he, he does asbestos work for Hotel Syracuse, which is
6 being remodeled. But it's the off-season, he is not working
7 right now. And therefore, he was selling crack cocaine to, I
8 am not sure of the word, to substitute or to --

9 MR. LOFARO: I am going to object, Your Honor.
10 This is beyond the scope of the suppression, which is what
11 we are with right now.

12 THE COURT: Overruled.

13 A. He's selling crack cocaine as a way to substitute the
14 money that he's lost because he's not working right now for the
15 asbestos, remodeling --

16 Q. Okay. And that statement was made in response to a
17 question: Whether or not he was employed, correct?

18 A. Right. Because on the arrest report, we have to ask
19 religion, education, employment, that kind of thing.

20 Q. All right. So it was essentially the product of
21 pedigree questions, is that correct?

22 A. Yes, sir.

23 Q. Did you ever ask him whether he sold crack cocaine?

24 A. No.

25 Q. Did you ever ask him whether he was involved in any

Ettinger - direct - Schiano

1 sort of criminal activity?

2 A. No.

3 Q. Okay. So that response was purely the result of
4 asking whether he was employed, for the purposes of your
5 police report, correct?

6 A. Right. By this time, the investigation, we got a good
7 rapport with him. We are filling out the -- I am sorry, the
8 arrest report, which is called a 12. And it's the conversation
9 we had.

10 Q. And after that, he's booked into the Justice Center,
11 correct?

12 A. Yes, sir.

13 Q. And that concludes essentially your part in the
14 investigation, yes?

15 A. Yes, sir.

16 MR. SCHIANO: All right. Officer, I have no
17 further questions. Stay right there, Mr. LoFaro would have
18 some questions for you.

19 THE COURT: Okay. Cross-examination.

20 CROSS-EXAMINATION BY MR. LoFARO:

21 Q. Good morning, Officer, how are you?

22 A. Good, sir. How are you?

23 Q. Good. Thank you. Officer, just let's pick up right
24 where we ended up with regard to the statement that he does
25 asbestos work that you claim he made. And when he's not doing

Ettinger - cross - LoFaro

1 asbestos work, I believe it was your testimony that he stated
2 that he sells drugs.

3 A. Sir.

4 Q. And this is after the arrest?

5 A. Yep.

6 Q. This is after the search?

7 A. Yep.

8 Q. This is after he tried to run?

9 A. Yes, sir.

10 Q. This is after you informed him that he was on parole?

11 A. Yes, sir.

12 Q. And after the dust has settled, as a spontaneous
13 utterance, he tells you that he sells drugs?

14 A. While we were filling out the 12, while we are asking
15 him questions about the 12.

16 Q. In the hundreds of arrests or thousands of arrests
17 that you made, can you recall in a case where somebody else
18 made a spontaneous utterance like --

19 A. Yes, sir.

20 Q. After the arrest? Is that typical or atypical?

21 A. It's not typical but it happens.

22 Q. Okay.

23 A. Some people feel remorse about what they have done,
24 they talk about it.

25 Q. Certainly. Okay. Going back to May 16th, on that

Ettinger - cross - LoFaro

1 day, when you were in patrol for crimes in progress in the
2 high crime area, is this considered a high crime area?

3 A. Yes, sir.

4 Q. And is this where you stated the gangs were feuding?

5 A. Yes, sir.

6 Q. There were some gun activity?

7 A. Yes, sir.

8 Q. Okay. And in describing this parking lot that you
9 came upon, is it an apartment complex?

10 A. It's a -- have you ever been down there?

11 Q. I don't know if I have or haven't. I may have but I
12 can't be positive.

13 A. It's hard to explain. It is a large like kind of web
14 of different buildings that encompass the Pioneer Homes.
15 McBride runs through I believe the middle of it. And then like
16 Stewart court runs into that. There is roads that run into it.
17 There is roads off of it to the side that are labeled, but
18 also, they also have parking for the people who live there.

19 Q. So this area where you came upon the vehicle, those
20 parking spots in particular, if you know, were those for
21 residents of those houses surrounding that parking lot?

22 A. Yes, I believe so.

23 Q. Are you aware of whether or not Mr. Jones or Mr.
24 Jennings was a resident of those premises?

25 A. Mr. Jones gave an address which was not part of the

Ettinger - cross - LoFaro

1 Pioneer Homes. It wasn't on the "15." Sorry. It wasn't on
2 the incident report, because I can't remember exactly what he
3 told us. But that wasn't part of where he was. He wasn't
4 living there at the time. I think he gave something down off
5 of like, if I am correct about this, like Seneca or like down
6 south, in the Valley area. I think that's what he gave me at
7 the time. But it wasn't part of the Pioneer Homes.

8 Q. Did you later come to find out that he did live at
9 this Pioneer Homes?

10 A. No, sir.

11 Q. This parking lot, could you describe the ingress and
12 the egress for me of the parking lot, the exits and the entry
13 ways?

14 A. There is, I am not getting the exact street names, like
15 I said. When it comes in, the courts split with different
16 names. But as I said, if you come off of, which is I believe
17 McBride, north or south, you would turn into the first street,
18 which is I can't remember the name of it. And then turning,
19 coming past the first -- and then turn in, it's like a
20 horseshoe but there is only one way in and one way out.

21 Q. Okay. So it's two-way traffic in and out? Just one
22 entrance and exit as the same thing?

23 A. Two-way traffic?

24 Q. In other words, you exit and come in from one spot
25 like a two-way street?

Ettinger - cross - LoFaro

1 A. Yes, sir. Yes, you could go, come, take a shift, go
2 right but eventually you have to come back and come back off
3 the same place, I believe. I don't think there is an exit
4 anywhere north of that. I think you have to come out of the
5 same place.

6 Q. How big would you say that parking lot is?

7 A. That one he was in, or the whole thing?

8 Q. The one that he was in?

9 A. I couldn't estimate it. It's, it's a good sized
10 parking lot. It's not small by any means.

11 Q. How about any cars, maybe if that would be easier?

12 A. Cars, I don't know how many spots there are?

13 Q. Couple hundred or 150?

14 A. I don't think it's that many spots.

15 Q. No? Okay. Now, where were you traveling from when
16 you entered the parking lot?

17 A. We were just on patrol.

18 Q. Were you heading north, south on any particular
19 street?

20 A. I can't remember. Obviously, we were on McBride
21 because I believe, McBride, if McBride is the one that runs
22 there, which I believe that is, we had to have come on McBride
23 because there is only one way in, one way out. We would have
24 turned left in, and then illuminated the parking lot. So we
25 see the one car, and then we turn in, because we see them

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1 making all the furtive movements.

2 Q. Okay. So, you pulled into the parking lot, how many
3 cars did you see in the parking lot?

4 A. I'm not sure.

5 Q. When you first pulled into the parking lot, did you
6 see any cars other than the car of the subject?

7 A. We were illuminating anything, any cars that were in
8 the parking lot, anybody that was there. So I am sure there
9 was probably cars. I can't, I couldn't give you a number.

10 Q. Okay. And this was January, about what time did you
11 say?

12 A. I'm not sure. It would be on the police report.

13 Q. Okay. I think it says about 6:45, does that sound
14 right?

15 A. I am not sure. It would be on the police report.

16 Q. Okay. Now, at that time of year, it would have been
17 dark, correct?

18 A. Yes, it was dark.

19 Q. Okay. And?

20 A. It's the reason why we were illuminating the vehicles
21 with the spotlights.

22 Q. How far away were you from Mr. Jennings' vehicle when
23 you shined the spotlight on the vehicle?

24 A. Like I said, I can't, I can't really estimate distance
25 with you. I don't want to give you something that isn't the

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1 right thing. But as we were entering, as we entered from
2 McBride into the apartment complex, as we were coming in, the
3 Radisson Court, at least is on the left, where Mr. Jennings
4 was, Mr. Jennings is now parked down inside the parking lot, a
5 ways. I mean, I don't think he was all the way to the end of
6 the parking lot but he was more than halfway to the end of the
7 parking lot. So it's not very, it's not very far. But he is
8 not right up on top of us before half way. It's a little
9 farther in the parking lot.

10 Q. Okay. And from your vantage point, when you first
11 shine that spotlight inside the vehicle, what exactly did you
12 see?

13 A. Like I said before, they looked at us, recognizing it
14 was a police vehicle with the spotlights, they turned and began
15 making the furtive movements.

16 Q. How many kilowatts is that spotlight, do you know?

17 A. Sir, I don't know.

18 Q. It's awfully bright, though?

19 A. Yes, a bright spotlight.

20 Q. Have you ever been in a situation where you had a
21 spotlight like that and you shined it in your vehicle?

22 A. Absolutely.

23 Q. Okay. And that's probably going to cause some type of
24 reaction with anyone, correct?

25 A. Not like that, sir.

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1 Q. And there was nothing on Mr. Jones, correct?

2 A. Mr. Jones, no.

3 Q. Zero, correct?

4 A. I don't believe there was anything on Mr. Jones.

5 Q. Okay. Yet it's your testimony that he was making
6 furtive movements and moving wildly also? Okay. After you
7 shined the spotlight in the vehicle, from your vantage point,
8 where did you proceed from there with your vehicle?

9 A. We just pulled up and then pulled behind there, to Mr.
10 Jennings' vehicle, to kind of like the rear driver's side of
11 the vehicle. Stopped the vehicle and approached.

12 Q. Okay. Did you park directly behind his vehicle?

13 A. We weren't directly behind. I think we were at the 45,
14 like the rear, the rear driver's side corner.

15 Q. Do you recall if there was a car to the right or to
16 the left or both?

17 A. There was no car to the left. Because there was enough
18 room for Officer Decker and him to get out and do the search,
19 and then he ran. I remember that. And I don't believe there
20 was any car to the right because Mr. Jones is very large and we
21 were standing next to the vehicle.

22 Q. From where your vehicle pulled, and you exited the
23 vehicle, were they free to leave at that point in time?

24 A. Were they free to leave at what time?

25 Q. When you pulled behind the vehicle?

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1 MR. SCHIANO: I am going to object to that
2 question, Judge, whether or not this police officer --

3 THE COURT: Sustained.

4 Q. Based on where your vehicle was parked, could Mr.
5 Jennings have backed up and left the parking lot at that point
6 in time?

7 A. I'm not sure.

8 Q. Was there room for him to leave if he chose to leave?

9 A. Like I said, I am not sure.

10 Q. If he were to have left that vehicle, was he free to
11 leave?

12 MR. SCHIANO: Objection.

13 THE COURT: Sustained.

14 Q. When you first entered the parking lot, and you saw
15 all these vehicles, in particular Mr. Jennings' vehicle, I
16 think you said your observation was that that was a suspicious
17 vehicle, is that correct?

18 A. Based on the investigation that we were in, that we
19 were looking at a high crime area, the fact that we illuminated
20 the vehicle, that they made those extreme furtive movements,
21 absolutely.

22 Q. Okay. What type of a vehicle was it, do you recall?

23 A. It was an Acura.

24 Q. 2003 black Acura. You would agree that that's
25 probably what it was?

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1 A. It would be on the police report.

2 Q. Okay. And anything in particular, you know, probably
3 one of the most common cars in the country, right, is an
4 Acura, 2003 Acura, is that correct?

5 A. I couldn't tell you that, sir.

6 Q. Would any 2003 black Acura have been a suspicious
7 vehicle?

8 A. Any vehicle in that parking lot, that we illuminated,
9 where the passenger, where the occupants reacted that way would
10 have been a suspicious vehicle, absolutely.

11 Q. Okay. And again, with regard to the wild, furtive
12 movements, could you describe those again one more time?

13 A. Like I said before, as we illuminated the vehicle.
14 They looked at the light, and then immediately recognized us as
15 a police vehicle, turned and began doing the dramatic movements
16 towards their lap, towards the center of the vehicle as if they
17 were attempting to secrete or hide something.

18 Q. Could they also have been reaching for a file folder?

19 A. There was no file folders.

20 Q. Could they have been adjusting the car stereo?

21 A. Dramatically like that? Probably not.

22 Q. Could they have been talking with their hands?

23 A. No.

24 Q. Could they have been startled that all of a sudden
25 there is a bright light in their vehicle and they are going,

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1 gesticulating, what's going on here, who is over here?

2 A. As soon as giving -- I keep saying the same thing.

3 Q. Okay. All right. When you pulled into the parking
4 lot, did you notice anything other than the suspicion -- there
5 was no crime in progress was there?

6 A. No. That's where a suspicious vehicle.

7 Q. Okay. Nothing consistent with this vehicle with
8 regards to guns or gangs though, correct?

9 A. I am not sure. Is that a question?

10 Q. I am just saying that you were patrolling the area, I
11 thought you said for gangs and guns?

12 A. Drugs, guns and gangs, the crime reduction team does.
13 We were in that area due to the fact of the high violence
14 between the P.H. gang and the Bricks gang.

15 Q. Okay. You mentioned that a scale was recovered, with
16 a residue on it was consistent with cocaine. Did you charge
17 anyone in the vehicle with possession of paraphernalia?

18 A. We did not. We didn't have a Nik wipe, to wipe the
19 scale there. We didn't do the criminal possession of drug
20 paraphernalia.

21 Q. Did you test the scale -- test the scale for the --
22 did you test the residue on the scale that you claimed was
23 consistent with cocaine?

24 A. As I stated seconds ago, we did not test it because we
25 did not have a Nik, N-i-k, test wipe with us, therefore we

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1 didn't test it nor did we charge him with criminal use of drug
2 paraphernalia. If we had tested it, we would have charged him.

3 Q. And you said that was right, that was right in plain
4 view where the drinking containers and the console was?

5 A. I don't remember if there was a drink container in
6 there. I am not sure if it's inside the center console. I'd
7 say open center console, either on top of the front of it or
8 the front open area of the center console, it was in plain view
9 on the center console.

10 Q. How much time would you guess elapsed between, you
11 know, I wouldn't say guess, but how much time elapsed between
12 when you noticed the furtive movements, and you came upon the
13 vehicle and noticed that scale?

14 A. We observed the movements. Quickly drive up. Get to
15 the vehicle. Exit as quick as we can, for officer safety.
16 Officer Decker approached the driver's side. I approached the
17 passenger side. Officer Decker immediately sees the scale,
18 notifies me of the scale. Then we proceed --

19 Q. So how much, how much time would you say elapsed
20 between the time you actually shine that spotlight, saw the
21 furtive movements, and make contact with Mr. Jones?

22 A. I can't give you time, sir. Not long at all.

23 Q. When you observed those wild, furtive movements,
24 between the time that you shined the spotlight and the time
25 you approached the vehicle, that would have been plenty of

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1 time with those wild movements to grab that scale and stick,
2 is it under the seat, correct?

3 A. Could that have happened? Yes, but it didn't.

4 Q. Okay. All right. That digital scale, was that the
5 reason that you believed you had reason to investigate
6 further, the observation of that digital scale?

7 A. The digital scale with the white residue on it, yes.

8 Q. Okay. Now that possession of a scale, in and of
9 itself, is not a crime, is it?

10 A. Not a crime. No.

11 MR. SCHIANO: Judge, I am going to object to that
12 question, whether it's a crime.

13 THE COURT: Sustained.

14 MR. LOFARO: I don't have any further questions.
15 Thank you, Officer.

16 THE COURT: Thank you, sir. Redirect?

17 MR. SCHIANO: Nothing from the People, Your
18 Honor. Thank you.

19 THE COURT: You're all set.

20 THE WITNESS: Thank you.

21 THE COURT: Next witness?

22 MR. SCHIANO: People rest, Judge. Thank you,
23 Officer.

24 THE COURT: Okay. Mr. LoFaro, your witness?

25 MR. LOFARO: Your Honor, I am going to call the

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1 defendant Tony Jennings, Your Honor, to the stand.

2 T O N Y J E N N I N G S, Defendant, Called as a witness in
3 his own behalf, being duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. LoFARO:

5 Q. Good morning, Mr. Jennings.

6 A. Good morning.

7 Q. Mr. Jennings, you heard some of the testimony here
8 today. I am going to call your attention back to that date as
9 well, that date being January 5th of this year. Do you recall
10 that day?

11 A. Yes.

12 Q. And I am going to call your attention back to a time,
13 a little bit before the stop which is the subject of this
14 suppression hearing. Maybe a couple, two or three hours
15 before that. Do you recall what you were doing that day?

16 A. Yes.

17 Q. Could you explain that for the Court what were you
18 doing on that day?

19 A. I was, couple hours before, maybe hour or two before,
20 or?

21 Q. Yes?

22 A. Hour or two before, I was at home.

23 Q. Okay.

24 A. I was at home watching the basketball game.

25 Q. Okay. Anything happen to cause you to stop watching

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1 that basketball game and leave your premises?

2 A. I got a phone call from my friend, Willie Jones, and he
3 asked me for a ride, so I came down to --

4 Q. Where was Mr. Jones at the time, where did he want you
5 to pick him up from?

6 A. At the time, he was down in Pioneer Homes. And he was
7 in Radisson Court at his girlfriend's house, so I came.

8 Q. Okay. So you picked him up at Radisson Court from his
9 girlfriend's house?

10 A. Correct.

11 Q. So you left your home about what time?

12 A. I am going to say maybe, maybe around five o'clock,
13 maybe.

14 Q. And headed down to Radisson Court?

15 A. Five o'clock that night, yes.

16 Q. Pulled into Radisson Court, did you park or did he
17 come running out?

18 A. No, he came out when I called him, let him know that I
19 was outside. He came right outside.

20 Q. Why did he want you to come and pick him up?

21 A. He needed a ride. I told him a little earlier that day
22 that I would give him a ride to the gas station to get his car
23 in shape. He said needed to fill his gas can up with gas, and
24 take him around to his vehicle, to get it running and get it
25 back over to the parking lot.

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1 Q. Okay. So you picked him up, at Radisson Court, where
2 did you go when you left Radisson Court?

3 A. We went to Monde's [ph] gas station on South Salina
4 Street.

5 Q. What type of a vehicle did he have, was his vehicle?

6 A. No, no. It was at -- a barbershop on Burt Street.

7 Q. Okay.

8 A. Behind a House of Hair. That's the name of the
9 barbershop it was parked behind.

10 Q. So you went to the gas station, what did you do there?

11 A. He filled up. I waited for him while he filled the gas
12 can up with gas. Then we rode around to the -- to where his
13 car was.

14 Q. What did you do when you came upon his car?

15 A. I turned my lights and my headlights on in the car
16 because it was dark by then, five o'clock, in January. It gets
17 dark out early. So I had my lights on shining on his car so he
18 could see what he was doing. He had to put air in his tires.
19 And he also had to hook the cable back up around his battery
20 because he had disconnected it for some reason; that way the
21 battery wouldn't drain completely, so. You know, he was
22 working with that for a while but he figured out he didn't have
23 the tools that he needed to get the wires connected back to the
24 battery. How he needed to do it. So, after that he packed up
25 all his stuff, put it back in my car, the gas can, the

Jennings - direct - LoFaro

1 cigarette-lighter-inflator that you use to fill up basketballs,
2 tires, whatever. You just plug it into your cigarette lighter.
3 So he put all the stuff back in the car, and I gave him a ride
4 right back around to his girlfriend house's in Radisson -- he
5 pulled --

6 Q. Let's take that step-by-step. You leave Burt Street.
7 You come back to Radisson Court. Where do you enter the
8 parking lot in Radisson Court?

9 A. Well, you come down McBride Street, and you have to
10 make a left going up Jackson Street, and then make a left in
11 into Radisson Court. And that's where I pulled. And it was
12 one car, in the parking lot in front of his girlfriend's
13 apartment. There was no parking spaces. So I was more, as
14 soon as I pull into Radisson Court, I was the second, the
15 second parking space. I was in the second parking space.
16 There was a truck here, then it's my car where I pulled, and
17 then it was cars going along the line. And the parking lot, it
18 probably holds maybe around I want to say probably 20 cars,
19 maybe, if not 25, at the most.

20 Q. And were you, where you pulled into that parking
21 space, what was in front of you? Were there more parking
22 spaces from the sidewalk or?

23 A. Oh, no, there was bushes. It was some bushes in front
24 of me. And that's the first apartment complex. The first
25 apartment complex is right there.

Jennings - direct - LoFaro

1 Q. Were there cars on either side of you?

2 A. Yes, it was a truck on my left-hand side, and then
3 there was a car on my right-hand side.

4 Q. When you pulled into that parking spot, what did you
5 do next? Were you sitting there in the car, with you?

6 A. We were sitting there. We was talking for probably
7 about, maybe five to seven minutes. We was just talking for a
8 minute to just sitting there, but the gas from the gas can was
9 so strong in my car, I told him: Listen, Willie, get that out
10 of my car. Set that outside the car, so.

11 Q. Just making small talk for four or five minutes?

12 A. Yes.

13 Q. Typical of when you drop somebody off, you are taking
14 somebody off?

15 A. I was getting ready to go back home to finish watching
16 the game. But he took the gas can out of the car. And he was
17 standing outside the car. He was adjusting his pants or
18 whatever, fixing himself, getting ready to go in the house. It
19 was, you know --

20 Q. What happened next?

21 A. He turned around and he looked, and he seen a cop car,
22 and he was like shocked was the way they pulled up, they pulled
23 up directly behind my car, and blocked my car off. And when he
24 seen them, he was like, Oh. He said a swear word. What he did
25 use, he was just shocked.

Jennings - direct - LoFaro

1 Q. Did you feel like you were free to leave at that
2 point?

3 A. No, no. I couldn't leave. My car was completely
4 blocked off. The car was completely blocked off.

5 Q. Did you see any spotlight illuminating your vehicle at
6 that point?

7 A. No. No, there wasn't a spotlight. There wasn't a
8 spotlight on my car.

9 Q. Was it dark?

10 A. Yes, it was, it was dark. Absolutely, it was dark
11 outside.

12 Q. So your friend grabs his gas can, exits the vehicle on
13 the passenger side, correct?

14 A. Right, he was outside of the car. The gas can was
15 already on the ground. He was just sitting there for a few
16 seconds and we was just talking. And that's when the officers
17 pulled up, they pulled in. We was shocked because neither one
18 of us could see them. And just abruptly, they had -- they was
19 behind me, blocking off my car. And I couldn't see them
20 because it was a truck on my side, coming into the parking lot,
21 so I wouldn't have been able to see them. And he wasn't able
22 to see them. Because they had their lights out on their, on
23 the police cruiser. Their lights was out.

24 Q. So your friend, Mr. Jones, exits the vehicle, he is
25 standing right outside of the vehicle?

Jennings - direct - LoFaro

1 A. He was outside the vehicle when the officers pulled up.

2 Q. The officers pulled up, and parked behind you. What
3 happens next?

4 A. They both hopped out of the car. They both rushed him.
5 They both hopped out of their car, they rushed to him. And
6 they asked him, though: What was he doing? Turn around. Put
7 his hands, placed his hands on the hood of my car. My door was
8 opened, on the passenger side, because he was out of the car.
9 And they just started -- I am watching, and one of the cops,
10 they got his flashlight, I could see it flashing all through my
11 car. It was, the flashlights is flashing all through my car.
12 And they were, they are searching him. And they are going
13 inside of his pockets, searching inside of his pants. And he
14 is asking them, What are they doing? Like, what's this all
15 about? And they are telling him, We see furtive movements.
16 What do you guys got going on? You got drugs? You got guns on
17 you? He is asking them, like he's upset. He's saying, Well,
18 what reason are you searching me? No, I ain't do nothing. I
19 don't have anything. So they continued just searching through
20 him.

21 Q. What were you doing while he was being searched?

22 A. I was sitting in the driver's seat and I was watching
23 through, through my passenger door.

24 Q. And what happens next?

25 A. After a few seconds of watching him do that, I opened

Jennings - direct - LoFaro

1 my car door to get out, to step out of my car. The officer ran
2 around. The officer that was up here testifying, that wasn't
3 the officer who placed me in handcuffs and that then searched
4 me. So I just want that known, Your Honor.

5 Q. Okay. Another officer?

6 A. He ran around, from the side where Willie Jones was at,
7 and came around to my side, and jumped inside of my doorjamb,
8 preventing me from getting out of my car. So, I couldn't get
9 out, so I sat there. And he started asking me questions.

10 Q. So, not only at this point, not only is your vehicle
11 blocked but you're blocked in by the officer, you're not free
12 to leave either?

13 A. Correct.

14 Q. Okay?

15 A. Correct.

16 Q. So, as you stepped out of car, what happened next?

17 A. I never was allowed to step out of the car. The
18 officer started questioning me, asking me if it was guns, or if
19 it was drugs in the car.

20 Q. What did you tell him?

21 A. I told him, No.

22 Q. Okay.

23 A. I told him, No.

24 Q. Then what happened next?

25 A. He asked me if I lived there, or if either one of us

Jennings - direct - LoFaro

1 lived there. I told him that his girlfriend lives in the
2 apartment. He asked where was we coming from. I told him we
3 was coming from the gas station. I just brought him back from
4 working on his car. I was dropping him off. I told him, I
5 said, You smelled my car, it smells like gasoline. Here is the
6 gas can right there. So he tells me -- I asked him what this
7 was all about. He never told me why he blocked my car off.

8 Q. Did he ever ask you for your identification?

9 A. Yes, he asked me for, he asked me if I had an I.D.

10 Q. Did you produce identification?

11 A. I told him I didn't have an I.D. I told him I have a
12 driver's license. And he said that was fine.

13 Q. That's identification.

14 A. Okay.

15 Q. Did you produce a driver's license?

16 A. Yes, I said I got it in my back pocket, in my wallet.
17 Could I get that for you? He said, Yes. So I reached in my
18 back pocket, got my wallet out and I handed it to him.

19 Q. Was it a valid license?

20 A. Yes. I asked him, once I handed him my license, I told
21 him, I said, I have my registration and insurance in the glove
22 compartment, would it be okay if I go in there and get it for
23 you? He thought for a second, then he said, yes, go ahead. So
24 I went in, reached in, and got it for him. And I gave it to
25 him. He held it in his hand. He just held it in his hand.

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1 And he just looked at it. Then he stuffed it in, he stuffed my
2 I.D. in his top pocket. Then he told me to step out of the
3 car.

4 Q. Then what happens next?

5 A. I asked him -- I said, Step out of the car for what? I
6 said, Did I do something wrong? He said, Step out of the car.
7 So I stepped out of the car. Told me to turned around, and
8 place my hands on the hood of the car. So I turned around,
9 placed my hands on the hood of the car. Then told me -- I
10 said, What did you stop me for like? I was kind of upset. And
11 I am telling him, like, I am, like, this isn't right. You have
12 no reason to do this to me. He said, Well, I am pulling up. I
13 see guys making furtive movements inside of the car. I believe
14 there is something, there is something going on. So, he said
15 you seem like you're acting like you're real nervous. So I
16 said, No, I am not nervous. You're harassing me and you
17 stopped me for no reason. So he started conducting a search.
18 So, he's checking my coat that I got on. I got on a big Army
19 fatigue coat. He is checking my coat. He squeezes the top
20 pocket. Then he sticks his hand in there. I don't say -- I
21 don't say anything. Then he grabs the lower part of my jacket
22 pocket, squeezes it. And then he sticks his hand in it. So I
23 asked the officer, I said, Why are you going inside of my
24 pockets and am I under arrest? He said, Well, I believe there
25 is something going on and, you know, I see you making furtive

Jennings - direct - LoFaro

1 movements. There has got to be something going on. Got two
2 guys inside of a car. I didn't understand what he was saying
3 because when he pulled up, Willie Jones wasn't inside of my
4 car, he was outside of my car getting ready to leave and going
5 to his girlfriend's apartment.

6 So, back to the search, he squeezes my right pants
7 pocket, and he sticks his hand inside of my right pants pocket.
8 So I am telling the officer, I am like, Listen, this is
9 unnecessary. I said, This is unnecessary. Why are you
10 violating me?

11 And he said, Well, you seem like you're real nervous to
12 me.

13 I said this ain't about being nervous, like you're
14 searching inside of my pockets and I didn't do nothing wrong.
15 He didn't even run my license or my registration or none of
16 that, until after the fact that I was arrested.

17 So now, the officer, he sticks his hand, he sticks his
18 hand underneath my coat. And then he goes down the back of my
19 pants. So I tell the officer, Well, whoa, you're out of line.
20 I told him, I said you're violating me now.

21 He said you seem like you're real nervous to me. I
22 said, No, you're sitting there, searching my pockets, you got
23 your hands inside of my pants. So I turned around, to get the
24 officer to stop. I am telling him to take his hand out, to
25 stop. I turned around. And he grabbed me and he slammed me to

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1 the ground. I hit my head on the ice in the parking lot. And
2 he took me down to the ground. I am not going anywhere. I am
3 down.

4 So I am trying to, you know, put my hands behind me so
5 he can secure me or whatever. And the other officer that came
6 up there and testified, he ran around the car, and he came
7 around, and he reached down on the ground and he punched me in
8 the face. This clearly assaulted me for no reason. Just
9 strike me in the face. And I don't understand. Like, there
10 was no reason for it. And the officer picked me up. And he
11 continued searching inside of my pockets, and pulling out
12 money, and putting everything on the hood of the hood of my
13 car, and arrested me.

14 Q. Okay.

15 A. If I was already arrested.

16 Q. Okay. So again, your testimony is you picked up a
17 buddy, tried to fix his car, correct?

18 A. Right.

19 Q. Swung by back at the apartment complex?

20 MR. SCHIANO: Objection, Judge. Cumulative and
21 it's leading.

22 THE COURT: All right.

23 MR. SCHIANO: He is just reiterating his
24 testimony over again, in a leading fashion.

25 THE COURT: What was the question? I didn't hear

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1 it. What?

2 Q. I said: You swung back to the parking lot, he swung
3 back to the parking lot to drop your friend off, correct?

4 A. Yes.

5 THE COURT: Overruled.

6 Q. At that point you got blocked in?

7 A. Yes. The officers pulled in to the car.

8 Q. Jumped on your?

9 A. Pulled into the parking lot, and pulled directly behind
10 my car and blocked my car off.

11 Q. You couldn't leave, you're clearly detained?

12 A. I couldn't leave, and they just jumped out and ran
13 straight at my friend Willie Jones, and just started searching,
14 searching him.

15 Q. Nothing was said, just searched him immediately?

16 A. They just started searching him. They asked him, what
17 was he doing, while they were searching.

18 Q. When you went to get out of the car, ran over to
19 the --

20 A. The officer ran around, ran around my car, and you
21 know, while we was there, he was asking me the questions about
22 what was going on? What I was doing? He was flashing the
23 light all in my face. And flashing it inside of my car. Was
24 looking around. But they never, the officers never put on a
25 big, the big strobe light he had.

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1 Q. Now while you were in the parking lot, talking to your
2 friend, anticipating dropping him off, were you doing anything
3 other than talking?

4 A. No.

5 Q. Were you making any wild, furtive movements?

6 A. No, there was no furtive movements. I don't
7 understand, because the cops saying that he seen furtive
8 movements, when he flashed a big light in my car, he never
9 flashed a big light in my car.

10 Q. That's okay. Were you making any wild, furtive
11 movements?

12 A. No, I wasn't. There was no furtive movements made at
13 all. So I don't understand the reason why he even, why did he
14 even pick me, why did he even stop me? Just because I was
15 sitting in the car? Because the passenger was already outside
16 of, outside of my car.

17 MR. LOFARO: Okay. You're all right. I have no
18 further questions, Your Honor.

19 THE COURT: Okay. Cross-examination?

20 CROSS-EXAMINATION BY MR. SCHIANO:

21 Q. Mr. Jennings, how long were you in the parking lot?

22 A. For probably for about five to seven minutes, at most.

23 Q. Okay. You came from the gas station?

24 A. Gas station, first, then stopped by Burt Street to try
25 to get his car.

Jennings - cross - Schiano

1 Q. All right. By where?

2 A. On Burt Street. It was behind a house on Harris, a
3 barbershop. That's where he had his car parked.

4 Q. Then he is your friend?

5 A. Willie Jones.

6 Q. How long have you known Willie Jones?

7 A. Since I was very, very young.

8 Q. You sell Willie Jones cocaine?

9 A. No.

10 Q. Have you ever sold Willie Jones cocaine?

11 A. No.

12 Q. So, your testimony is you're in the parking lot, of
13 Pioneer Homes, correct?

14 A. Correct.

15 Q. Now, you testified that there is cars to your left and
16 cars to your right?

17 A. Correct.

18 Q. A truck to your left, you said?

19 A. Correct.

20 Q. And cars to your right?

21 A. Correct.

22 Q. Okay. And at some point the first thing you see, you
23 don't see the police car, correct?

24 A. I can't see it because there is a car on this side of
25 me. So anything that's coming into the parking lot, I can't

Jennings - cross - Schiano

1 see anything.

2 Q. Okay. But you didn't see that police car initially,
3 correct?

4 A. No.

5 Q. First thing you see is two police officers?

6 A. The first thing that I see? I don't understand the
7 question.

8 Q. At the first point you realized that there is police
9 there, you testified?

10 A. Correct, correct, correct. I didn't see them until
11 they pulled behind me and blocked my car off. And I heard
12 Willie Jones say, Oh, s-h-i-t. And I turned around and looked
13 to see what he was talking about. I turned around to look
14 through the back windshield of my car to see what he was
15 talking about, because I didn't know what was going on. And
16 that's when I seen the two officers inside of the car.

17 Q. Okay. So when you first see the police officers, they
18 were still inside their car?

19 A. Correct.

20 Q. Okay. And at that point, Willie Jones is outside of
21 your vehicle, correct?

22 A. Yes, he was outside of my vehicle.

23 Q. You said outside. You have in your vehicle, because
24 there was a gas can in the vehicle, correct?

25 A. No. He was getting ready to go in the house. He was

Jennings - cross - Schiano

1 just talking for a second or two before he was getting ready to
2 go in the house. He was taking out all his property.

3 Q. At some point there was a gas can in your car?

4 A. Correct. Correct.

5 Q. You said on direct examination that the smell was
6 bothering you, correct?

7 A. Yes.

8 Q. You told him to get out of the car with the gas can?

9 A. Yes.

10 Q. Okay. And he does that, he gets out of the car?

11 A. Correct.

12 Q. Takes the gas can out of the car?

13 A. Correct.

14 Q. And it's at that point that the police come?

15 A. After a few seconds, me and him talking.

16 Q. What is he doing at that point, just standing outside
17 the car?

18 A. He was taking out his, he was taking out his stuff. He
19 was taking out the air compressor, that I mentioned that you
20 plug into the cigarette lighter, then you plug into your tire
21 and put air in there. He took that box out of the car. And he
22 was sitting there and he was stretching. And I was telling
23 him, I was getting ready to go back home to finish watching the
24 game. He was telling me, I am going in the house to --

25 Q. The next thing?

Jennings - cross - Schiano

1 A. Put his feet --

2 Q. The police car shows up?

3 A. Correct.

4 Q. Two police officers begin to search Mr. Jones?

5 A. They jumped out of their car. They blocked my car off.
6 Jumped out of their car and run directly at him, both officers,
7 yes.

8 Q. Okay. And so, the testimony of Officer Ettinger that
9 you two were in the vehicle is incorrect?

10 A. I believe he did testify that we both were in the
11 vehicle, yes.

12 Q. That's incorrect?

13 A. That's incorrect.

14 Q. Okay. In fact, you were in the vehicle, and Mr. Jones
15 was outside of the vehicle?

16 A. Correct.

17 Q. These two officers approached Mr. Jones, yes?

18 A. Yes.

19 Q. They begin to search him?

20 A. Correct.

21 Q. Approximately how long are they searching Mr. Jones?

22 A. Maybe, maybe about 30 seconds, maybe about 40 seconds,
23 I want to say at the moment.

24 Q. Okay. They approached Mr. Jones. They begin
25 searching him approximately one, two, three, up to 40 seconds

Jennings - cross - Schiano

1 maybe?

2 A. It could have been a minute. As a matter of fact, I am
3 going to say it was probably a minute, give or take.

4 Q. Even better, a minute, that entire minute?

5 A. Correct.

6 Q. You're in the driver's seat of that vehicle, correct?

7 A. Correct.

8 Q. These two police officers don't know whether you have
9 a gun, do they?

10 A. No.

11 Q. They don't know whether you have any sort of weapon in
12 that vehicle?

13 A. No.

14 Q. Right? But they are paying no attention to you,
15 correct? For one minute, they are searching this person who
16 is outside of your vehicle?

17 A. It was flashlights that's flashing over my head. And
18 going in the back seat of my car, when I turned around and I
19 looked, and my door is opened while they are searching him.
20 So, I can actually see what's going on. And I do see.

21 Q. There is flashlights? Listen to me.

22 A. Okay.

23 Q. Are they searching Mr. Jones or do they have
24 flashlights? Are they searching your car? Those are two
25 different things?

Jennings - cross - Schiano

1 A. No, no, no. They are searching Mr. Jones.

2 Q. Okay.

3 A. One of them is searching him, that I know. The other
4 one is standing there, whatever he's doing, I can't really see.

5 Q. Wait a minute. You said that both people are
6 searching Mr. Jones. Were both officers searching Mr. Jones
7 or one officer searching Mr. Jones?

8 A. I am going to say it was one officer searching.

9 Q. Okay.

10 A. But they both jumped out on him.

11 Q. Okay. Where is the other officer?

12 A. He was standing right there with him.

13 Q. Right next to him?

14 A. Yes, on the passenger side.

15 Q. Okay. You're in the vehicle, correct, is this
16 correct?

17 A. Correct.

18 Q. For a minute?

19 A. Correct.

20 Q. Until you decide -- this is your testimony -- to get
21 out of the vehicle?

22 A. Correct.

23 Q. And it's at that point, that one of the two officers,
24 not Officer Ettinger?

25 A. Correct.

Jennings - cross - Schiano

1 Q. Walks around the vehicle and detains you, correct?

2 A. Well, he kind of, he kind of sprinted around, and --

3 Q. Detained you, correct?

4 A. Correct.

5 Q. All right. And at that point, it's your testimony
6 that he places you on the vehicle?

7 A. Well, he was asking me questions first.

8 Q. All right. He asked you some questions?

9 A. Correct.

10 Q. What does he ask you?

11 A. He asked me what was going on? Where we was coming
12 from?

13 Q. Did you answer him?

14 A. Yes.

15 Q. Okay. What else did he ask you?

16 A. He asked me what was going on. Where was we coming
17 from? What was we doing? Was there guns and was there drugs?
18 Was we selling drugs? Was we getting high? Was we using?

19 Q. Okay. Did you answer those questions?

20 A. Correct.

21 Q. All negative, correct?

22 A. Correct.

23 Q. All right. And do you know what, at that point, if he
24 noticed the scale that was in the center console of your
25 vehicle?

Jennings - cross - Schiano

1 A. There was no scale inside of my car.

2 Q. Okay.

3 A. So I have no idea where he gets it from. I never was
4 charged with a scale. I seen it in the police report. I was
5 never charged with a scale. And I don't know where it came
6 from, or what this officer did.

7 Q. Okay. So is it your testimony in this hearing that
8 there was no scale in your car?

9 A. There was no scale in my car.

10 Q. You had no scale?

11 A. No scale.

12 Q. Okay. So you're detained outside the vehicle, you're
13 searched?

14 A. Well, I give him my license. He asked me for I.D. I
15 told him I had a license. So I gave him my license. And I got
16 my registration and the insurance card out of the glove
17 compartment, box, and I gave it to him. And he grasped it in
18 his hand. He looked at my license, and he tucked my license in
19 his top pocket. And the rest of the paperwork, he put on the
20 hood of my car. He told me to step out.

21 Q. All right. And at some point, did you run away?

22 A. No.

23 Q. Okay. So you never ran from either of the two police
24 officers?

25 A. I never ran.

Jennings - cross - Schiano

1 Q. Okay. Did you ever indicate to them that you ran
2 because you were on parole?

3 A. Never.

4 Q. So you're being searched, and at some point the
5 officers locate a quantity of cocaine, correct?

6 A. Correct.

7 Q. And that is your cocaine, correct?

8 A. Correct.

9 Q. Okay. And you had that cocaine in your pocket?

10 A. Correct.

11 Q. Which pocket?

12 A. My left pocket.

13 Q. All right. Okay. How about the money that was in the
14 car, did they find money in the vehicle?

15 A. Correct.

16 Q. Was that your money?

17 A. Correct.

18 Q. How about the money in your pocket, was that your
19 money as well?

20 A. Correct.

21 Q. Now after the two police officers located these items,
22 but not the scale, correct, the scale wasn't there?

23 A. I am just now hearing about this scale. When I seen
24 the police report, I never knew, I never, I never was charged
25 with drug paraphernalia or whatever the case may be.

Jennings - cross - Schiano

1 Q. At some point you're brought to the Justice Center,
2 correct?

3 A. Correct.

4 Q. And when you get there, you answered some questions
5 about your employment status?

6 A. At the Justice Center?

7 Q. Yes.

8 A. No.

9 Q. Do you ever answer any questions about whether or
10 not -- did either police officer ask you if you were employed?

11 A. No.

12 Q. He never asked if you were employed? Did you ever
13 indicate that you worked in asbestos?

14 A. From these, the arresting officer?

15 Q. Yes.

16 A. Does he ever ask me was I employed?

17 Q. Yes.

18 A. Yes, yes, yes, he did.

19 Q. He did?

20 A. Yes.

21 Q. What did you tell him?

22 A. I told him that I work in construction and I was
23 currently employed at the time.

24 Q. Employed, or?

25 A. Employed, employed at the time. I was currently

Jennings - cross - Schiano

1 working at the time.

2 Q. All right. So you did not say that you were not
3 employed, that you worked in asbestos, that you were
4 unemployed but that you were selling cocaine or drugs?

5 A. No. I never made a statement to him telling him that I
6 sold anything.

7 MR. SCHIANO: All right. Mr. Jennings, I have no
8 further questions at this time. I thank you for your time,
9 sir.

10 THE WITNESS: Okay.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION BY MR. LOFARO:

13 Q. Just real quick. You said you were employed, that was
14 the answer that you had given, in construction, correct?

15 A. Correct.

16 Q. Could you tell the Court who you were working for?

17 A. H.V.H. Incorporation Enterprises.

18 Q. What were your job duties?

19 A. I was doing demolition work and asbestos work. But I
20 was currently employed. The job that I was doing at the time
21 was demolition.

22 MR. LOFARO: Okay. I have no further questions,
23 Your Honor.

24 MR. SCHIANO: Nothing further, Judge.

25 THE COURT: You're all set. Thank you. Any

- Defendant rests -

1 other witnesses?

2 MR. LOFARO: I do not, Your Honor.

3 THE COURT: No?

4 MR. SCHIANO: Judge, I would ask if the Court is
5 willing, in light of the defendant's testimony, I would
6 like, if I could have a brief adjournment to call a
7 rebuttal witness, if the Court is willing to do so?

8 THE COURT: Sure. Are you going to call Officer
9 Ettinger again?

10 MR. SCHIANO: No, I was going to call Detective
11 Decker -- or excuse me, it's not detective -- Officer
12 Jeremy Decker.

13 THE COURT: Is it something you could do this
14 week then?

15 MR. SCHIANO: I can certainly try.

16 (On the record scheduling discussion.)

17 THE COURT: How about Thursday?

18 MR. SCHIANO: Thursday, I should be able to do,
19 Judge.

20 THE COURT: What's your schedule?

21 MR. LOFARO: Thursday is fine with me, Your
22 Honor.

23 THE DEFENDANT: Excuse me, Your Honor? I had
24 filed a motion. And --

25 MR. LOFARO: Pro se?

- Defendant - discussion -

1 THE DEFENDANT: Yes. I know, I thought it was
2 just an affidavit, my statement on the account of what
3 happened what I wanted to testify to. But it was in the
4 form of a motion. And I would like to know if, I mean, my
5 attorney, he is in agreement if that can be sent in. I had
6 already sent a copy to Mr. Schiano, the district attorney.
7 And I sent one to you as well. I gave a copy to my lawyer.

8 THE COURT: And the Court sent it to your
9 attorney. We don't take pro se motions on April 20th.

10 THE DEFENDANT: Right. I had got a copy back
11 from you letting me know that you had sent it to my
12 attorney. And I was just I was hoping we were both in
13 agreement, if he could just add to that, or if that could
14 just be accepted? We were both on the --

15 MR. LOFARO: I think what he is talking about is
16 something, same thing, we are here for a motion right now,
17 it's kind of a moot point. It was just a letter to the
18 Court. But the letter is basically asking for what we were
19 asking for at the suppression hearing, so.

20 THE DEFENDANT: I mean, I would like that.

21 MR. LOFARO: You can't file a motion if you're
22 represented by counsel. You can't file.

23 THE DEFENDANT: No, no.

24 (Attorney/client conference .)

25 THE DEFENDANT: All I wanted is for my lawyer to

- Defendant - discussion -

1 add to that, if that could be accepted?

2 THE COURT: There is nothing to add to.

3 THE DEFENDANT: Okay.

4 THE COURT: Right?

5 THE DEFENDANT: Could we just go with that as
6 well, with what I submitted? I mean, we are both in
7 agreement.

8 (Attorney/client conference.)

9 THE DEFENDANT: The affidavit in support of the
10 motion.

11 (Attorney/client conference.)

12 THE COURT: Maybe he is asking, seeing this is
13 sworn to, he wants this to be included in his testimony?
14 Is that what you're saying?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: That's what he is saying.

17 (Attorney/client conference.)

18 THE COURT: It is an affidavit here. He wants
19 this to be included. While Mr. Schiano cross-examined him.

20 MR. SCHIANO: I don't understand what the point
21 of him. He just testified.

22 THE COURT: I don't know.

23 MR. SCHIANO: He is trying to incorporate an
24 affidavit through his testimony? I don't understand.

25 THE COURT: Mr. Jennings, you can't use written

- Defendant - discussion -

1 affidavits because oral testimony is what is the evidence,
2 and Mr. Schiano has an opportunity to cross-examine you.
3 He can't cross-examine an affidavit, okay? So I can't, it
4 can't be added. If that's what you are asking.

5 THE DEFENDANT: Okay. But, but not the
6 affidavit?

7 MR. LOFARO: He is telling you, you can't testify
8 by affidavit.

9 THE DEFENDANT: Okay, Your Honor.

10 MR. LOFARO: He can't cross-examine the
11 affidavit. That's what the Judge is saying.

12 THE DEFENDANT: Okay.
13 (Attorney/client conference.)

14 THE COURT: All set then?

15 THE DEFENDANT: Yes. Yes.

16 MR. SCHIANO: Thank you, Judge.
17 (Adjourned at 12:23 p.m.)

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20 C E R T I F I C A T E

21 I, Patrick J. Reagan, a Senior Court Reporter,
22 Fifth Judicial District, State of New York, do hereby certify
23 that the foregoing is a true and correct transcript of my
24 stenographic notes taken in the above-entitled matter, recorded
25 at the time and place first above-mentioned.

Date: 7/26/17

Patrick J. Reagan
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